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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

PEOPLE OF THE STATE OF MICHIGAN,
Petitioners,

vs.

JAMES WHITE,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The Petitioners, the People of the State of Michigan, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Michigan entered in this proceeding on September 6, 1974.

## OPINIONS BELOW

The opinion of the Supreme Court of Michigan is reported as *People* v *White*, 392 Mich 404, 221 NW 2d 357 (1974), and appears in the appendix hereto. The opinion of the Court of Appeals of the State of Michigan is unreported but appears in the appendix hereto.

## JURISDICTION

The judgment of the Supreme Court of Michigan was entered on September 6, 1974. The jurisdiction of this Court is invoked under 28 USC § 1257(3).

## QUESTION PRESENTED

Whether A Warrantless Search And Seizure Of A Pistol From The Trunk Of Defendant's Automobile Parked On The Public Street Across From His Apartment Building Conducted Contemporaneously With His Arrest Is Either Properly Within The Automobile Exception or Reasonable In View Of *Cady* v *Dombrowski*?

## CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision which this Petition involves is the Fourth Amendment to the United States Constitution which provides as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

## STATEMENT OF THE CASE

A Detroit bus driver named Lucian Fryling was fatally wounded at approximately 8:00 p.m. on the night of November 18, 1964. Moments after the fatal shots, two eyewitnesses saw a man hurry from the bus in which the slain busdriver lay. Although the witnesses were unable to see the man's face, nevertheless they retained and related to the police the man's general description.

One week later, on November 25, 1964, the police received information from a Joe Smith which led them to Dan Johnson, the informer and principal witness in this case. When Johnson learned that the police were looking for him in connection with this crime, he voluntarily appeared at the precinct station. He informed the police that he had reason to believe that James White was responsible for the death of the bus driver. He recounted that he

had been at the scene of the crime with White four or five times between 7:00 and 9:00 p.m. on evenings preceding the crime. He said that their purpose was to watch the buses and to plan a robbery of a bus driver. Johnson further informed the police that earlier on November 18, 1964, he had been with White and Bill Smith in White's car and that White asked Johnson what he was doing around 7:00 p.m. because he was going to get a bus. Johnson informed the police that he did not see White again that day. Johnson also described to the police a gun that he had seen in White's bedroom one month before the killing and told them that White kept the gun in either a bedroom drawer or in the trunk of his automobile under some rags. He described the car as a 1956 yellow, two-door Ford with a big dent in the back of the trunk which had an outside padlock. He also told the police he believed White would resist arrest. This information was given to the police from 12:30 until 2:00 a.m. on Thanksgiving Day, November 26, 1964, a day that no magistrate was available. At trial Johnson testified to those facts he had related to the police.

Acting upon Johnson's information the police immediately went to White's apartment and arrested him at 2:15 a.m. At this point the police believed the defendant had committed another killing. The police asked White for his car keys and, upon receiving them, searched the trunk of his car parked on the street in front of his apartment. The gun was found in the trunk under some rags. During the period that the police were making the arrest, White's wife was present.

Defendant White made an unsuccessful pre-trial motion to suppress the admission of the gun based upon an un-

lawful search and seizure. This motion was renewed at trial and was denied. The weapon was introduced into evidence and was shown to be the murder weapon. The jury rendered a verdict of guilty of first degree murder on April 13, 1965, and the defendant was sentenced to life imprisonment.

The foregoing facts appear in the decision of the Michigan Supreme Court.

The Court of Appeals of the State of Michigan entered a judgment affirming the conviction on June 28, 1972. The Supreme Court of the State of Michigan entered it's opinion reversing the conviction on September 6, 1974.

## REASONS FOR GRANTING THE WRIT

### THE SUPREME COURT OF THE STATE OF MICHIGAN DECIDED THE ISSUE IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THIS COURT.

The Michigan Supreme Court reversed the murder conviction in this case, holding that the search and seizure violated the protection of the Fourth and Fourteenth Amendments and the Michigan Constitution of 1963, Art 1, § 11. Parenthetically it must be noted that the Michigan Supreme Court, in accord with Michigan law, recognizes that it is precluded from setting a higher standard of reasonableness under the Michigan search and seizure clause than the United States Supreme Court maintains as applicable under the Fourth Amendment. *People v Moore*, 391 Mich 426; 216 NW 2d 770 (1974). The basis for the Michigan court's holding was its belief that the automobile exception is not applicable to this case because the circumstances here do not present the exigent circum-